

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SPECIALTY SURFACES	:	
INTERNATIONAL, INC. d/b/a	:	CIVIL ACTION
"SPRINTURF" AND/OR "SPORTEC,"	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
PLAYFIELD INTERNATIONAL, INC.,	:	
	:	No. 02-1202
	:	
Defendant.	:	
	:	

Newcomer, S.J. January , 2003

**O P I N I O N**

Presently before this Court is Defendant's Motion to Dismiss, Plaintiff's response and Defendant's reply. For the reasons that follow, Defendant's Motion is granted.

**BACKGROUND**

Plaintiff, Speciality Surfaces International, Inc. ("SSI"), is in the business of selling and installing synthetic athletic surfaces for playing fields. To this end, SSI employs subcontractors, one of which is the Defendant, Playfield International, Inc. ("Playfield"). SSI contracted with Playfield to provide manufactured synthetic turf which SSI installed at various sites throughout the United States. The instant suit stems from the alleged failure of the materials manufactured by Playfield and installed by SSI. In its

complaint, SSI alleges that Playfield used defective fiber in its production of the playing surface, causing twelve such fields installed by SSI to disintegrate.

Currently before the Court is Playfield's Motion to Dismiss. In it, Playfield argues: (1) the suit should be dismissed as the parties entered into a contract containing a forum selection clause requiring that the case be litigated in Georgia; (2) SSI's Count III fails to state a claim; and (3) SSI's customers should be joined. After carefully reviewing the parties' briefs, this Court held a hearing on December 16, 2002, in order to clarify contradictory affidavits submitted by each side pertaining to the forum selection clause issue.

## **DISCUSSION**

### **I. Forum Selection Clause**

Playfield's primary argument concerns a forum selection clause contained in documents which Playfield titled "proforma invoice[s]". The parties agree that Playfield prepared and submitted these invoices to SSI pursuant to each individual order placed with Playfield. Among other information, each of the invoices contains a description of the material ordered, quantity, price and delivery information associated with the order. Under a section of the invoices marked "Terms of Sale" the following language appears: "[v]enue and jurisdiction for any

dispute shall be Chatsworth, Georgia under Georgia Law." Also included in the invoices is a clause which reads "[b]y signing below I accept the terms and conditions of sale as outlined in the above pro-forma." Directly below this clause is a signature line for a representative of SSI to sign. Each of the invoices in question has been signed.

Playfield contends that these invoices and their forum selection clauses function as a contract between the parties, thereby divesting this Court of jurisdiction. SSI asserts that the invoices have little contractual value as the parties entered into an oral contract prior to execution of the invoices. More significantly, the parties were at odds when describing when these invoices were presented to SSI. Playfield submitted the signed sworn affidavit of its President, Justin Chadwick, who attested to sending SSI one of these invoices and receiving a signed copy prior to filling any SSI order. SSI submitted the signed sworn affidavit of its chief operating officer, Henry Julicher, who stated that SSI never received the invoices until after the transaction was concluded. This Court held a hearing on December 16, 2002, in order to resolve the contradiction.

After careful consideration of the parties' briefs as well as the testimony elicited during the December 16, 2002, hearing, it is apparent that Mr. Julicher was mistaken when he stated in his sworn affidavit that the invoices were not seen by

SSI until after each transaction was concluded. In fact, the evidence overwhelmingly showed that Playfield waited for an executed copy of the invoice from SSI before proceeding with the order. Therefore, the only remaining question for this Court is whether the forum selection clause is part of the contract between the two parties.

SSI contends that the parties entered into an oral contract, prior to seeing the first of these invoices, without ever negotiating the issue of a forum selection clause. In support of this notion, SSI points out that the first deposit on SSI's orders came without seeing the invoice. However, Pennsylvania's Commercial Code (statute of frauds) requires a contract of this nature to be in writing, presumably, to avoid scenarios like this. 12 Pa.C.S.A. § 2201. Because there is no writing sufficient to satisfy Pennsylvania's Commercial Code with regard to the alleged oral agreement, such an agreement is unenforceable. Therefore, this Court must look to the invoices, which satisfy the requirements of Pennsylvania's statute of frauds, as the governing contract. As such, the forum selection clause is a valid and enforceable provision. Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585 (1991). Under the parole evidence rule, this Court is unable to consider prior negotiations in interpreting the contract. Martin v. Monumental Life Ins. Co., 240 F.3d 223, 233 (3d Cir. 2001). Therefore, the

forum selection clause must be honored and the case must be dismissed. In light of the foregoing, this Court shall abstain from unnecessary discussion of the remaining points in Playfield's Motion.

AN APPROPRIATE ORDER FOLLOWS.

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Clarence C. Newcomer, S.J.

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	:	No. 02-1202
	:	
Defendant.	:	
	:	

**O R D E R**

AND NOW, this        day of January, 2003, for the reasons  
set forth in the accompanying Opinion, it is hereby ORDERED that  
this matter be DISMISSED.

AND IT IS SO ORDERED.

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Clarence C. Newcomer, S.J.